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Attorneys for Defendant JPMorgan Chase Bank, N.A.

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

MERRILL LYNCH BUSINESS FINANCIAL  
SERVICES, INC.,

Plaintiff,

v.

ARTHUR KUPPERMAN, E. ROSS BROWNE,  
PAULETTE KRELMAN, PGB  
INTERNATIONAL, LLC, and JPMORGAN  
CHASE BANK, N.A.,

Defendants,

and

JOHN DOES (1-10) and ABC CORPORATIONS  
(1-10),

Additionally Defendants  
on the Crossclaim.

CIVIL ACTION

Civil Action No. 06-4802 (DMC)

**SUPPLEMENTAL DECLARATION  
OF JOHN M. AUGUST IN  
SUPPORT OF CROSS-MOTION OF  
DEFENDANT JPMORGAN CHASE  
BANK, N.A FOR PARTIAL  
SUMMARY JUDGMENT AND  
RELATED RELIEF**

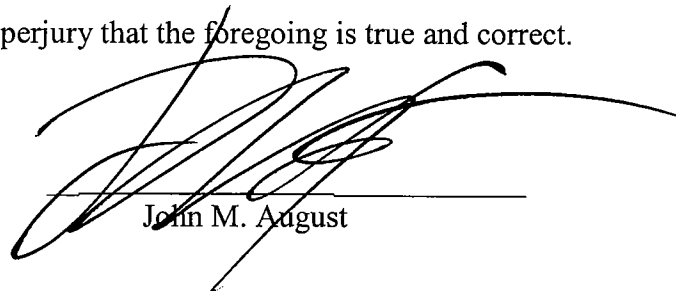
**JOHN M. AUGUST** declares as follows pursuant to 28 U.S.C. § 1746:

1. I am an associate with the law firm of Herrick, Feinstein LLP (“HF”), attorneys for defendant JPMorgan Chase Bank, N.A. (“Chase”) in the above matter. I make this declaration in further support of Chase’s Cross-Motion for summary judgment against defendants PGB International, LLC (“PGB”), Arthur Kupperman (“Kupperman”), E. Ross Browne (“Browne”), and Paulette Krelman (“Krelman”).

2. Attached hereto as Exhibit A is a true copy of the Affidavit of Wayne P. Tessler.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 4, 2007



John M. August

## EXHIBIT A

MERRILL LYNCH BUSINESS  
FINANCIAL SERVICES INC.,

ARTHUR KUPPERMAN, E. ROSS  
BROWNE, PAULETTE KRELMAN and  
PGB INTERNATIONAL, LLC

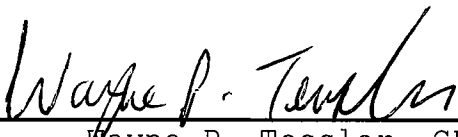
**AFFIDAVIT OF WAYNE P. TESSLER**

3. APM has previously produced documents responsive to the Subpoenas to counsel for JPMorgan and Merrill Lynch. In connection with this Affidavit, it will also produce individual tax returns for Ross Browne for the periods covered by the Subpoenas. To the best of APM's knowledge, there are no other documents responsive to the Subpoenas.

4. APM is also in receipt of a document entitled Independent Auditors' Report purportedly issued by an entity referred to as "Amper, Politziner & Mattia P.A." to the Board of Directors of PGB International LLC dated December 17, 2003 and a document entitled Independent Auditors' Report purportedly issued by an entity referred to as "Amper, Politziner & Mattia P.A." to the Board of Directors of PITTRA G.B. International, Inc. dated December 16, 2005 (collectively "the Documents"). Copies of the Documents are annexed hereto as Exhibits A and B.

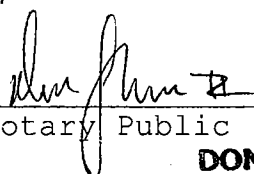
5. Neither Document was prepared by APM or anyone at the direction of APM. APM has no record of these Documents in its files. Indeed, the letterhead on the Documents is inaccurate. For example, the Documents state that APM is a P.A. whereas it is a P.C. Moreover, the Documents list Princeton, New Jersey and Flemington, New Jersey as offices of APM. These offices were closed prior to the date of the 2005 Documents. Additionally, the unauthorized letterhead also does not include new office locations in New York City and Rochelle Park that

existed in 2003 and was on our official letterhead. The 2005 unauthorized letterhead also does not include our New York City and Hackensack offices.

  
Wayne P. Tessler, CPA

DATED: December 19<sup>th</sup>, 2006

Sworn to before me this  
19<sup>th</sup> day of December 2006

  
Notary Public

**DONALD F. MULLER II**  
**ID # 2341071**  
**NOTARY PUBLIC OF NEW JERSEY**  
**Commission Expires 2/22/2011**  
Morris County

**EXHIBIT A**



AMPER, POLITZINER & MATTIA P.A.  
CERTIFIED PUBLIC ACCOUNTANTS  
and CONSULTANTS

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### Independent Auditors' Report

Board of Directors  
PGB International LLC

We have audited the accompanying balance sheets of PGB International LLC as of September 30, 2003 and 2002, and the related statements of income and retained earnings, and cash flows for the years then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of PGB International LLC as of September 30, 2003 and 2002, and the results of its operations and cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

*Amper, Politziner & Mattia P.A.*

AMPER, POLITZINER & MATTIA P.A.

December 17, 2003  
Wall, New Jersey



PGB INTERNATIONAL LLC.

Balance Sheet

September 30, 2003 and 2002

	<u>2003</u>	<u>2002</u>
Current assets:		
Cash	\$24,237	\$204,372
Accounts receivable		
Direct sales	4,595,298	3,581,348
Indirect sales	836,096	1,612,408
Other accounts receivable	350,748	397,042
Inventory	491,763	1,418,283
Prepaid income	47,284	325,280
Prepaid expenses	<u>27,636</u>	<u>103,963</u>
Total current assets	6,373,062	7,642,696
Equipment	56,843	41,443
Goodwill	<u>500,000</u>	<u>500,000</u>
Total assets	<u>\$6,929,905</u>	<u>\$8,184,139</u>
Current liabilities:		
Credit line payable	\$2,736,327	\$1,625,384
Accounts payable	1,298,683	3,739,297
Accrued expenses	<u>576,045</u>	<u>813,132</u>
Total current liabilities	4,611,055	6,177,813
Subordinated loans	<u>542,748</u>	<u>542,748</u>
Total liabilities	<u>5,153,803</u>	<u>6,720,561</u>
Stockholder equity		
Capital stock	15,000	15,000
Additional paid in capital	1,539,185	1,239,185
Retained earnings	<u>221,917</u>	<u>209,393</u>
Total stockholder equity	<u>1,776,102</u>	<u>1,463,578</u>
Total liabilities and equity	<u>\$6,929,905</u>	<u>\$8,184,139</u>

PGB INTERNATIONAL LLC  
Statements of Income and Retained Earnings  
For the Years Ended September 30, 2003 and 2002

	<u>2003</u>	<u>2002</u>
Sales		
Direct	\$32,154,064	\$32,476,401
Brokered	<u>11,793,765</u>	<u>15,387,208</u>
Total sales	<u>43,947,829</u>	<u>47,863,609</u>
Cost of sales		
Direct	29,911,183	30,647,557
Brokered	<u>11,218,760</u>	<u>14,654,284</u>
Total cost of sales	<u>41,129,943</u>	<u>45,301,841</u>
Operating income	2,817,886	2,561,768
Selling, general, and administrative expenses	<u>2,803,015</u>	<u>2,223,875</u>
Income before provision for taxes	14,871	337,893
Provision for taxes on income	<u>2,347</u>	<u>128,500</u>
Net income	12,524	209,393
Retained earnings - beginning	<u>209,393</u>	0
Retained earnings - ending	<u>\$221,917</u>	<u>\$209,393</u>

PGB INTERNATIONAL LLC

Statement of Cash Flows

For the Years Ended September 30, 2003 and 2002

	<u>2003</u>	<u>2002</u>
Cash flows from operating activities:		
Net income	<u>\$12,524</u>	<u>\$209,393</u>
Adjustments to reconcile net income to net cash from operating activities		
Depreciation and amortization	287,956	822,488
Decrease (Increase) in:		
Accounts receivable	(191,344)	(5,590,798)
Inventory	926,520	(1,418,283)
Income paid in advance		(325,280)
Prepaid expenses and other current assets	76,327	(103,963)
Increase (decrease) in:		
Accounts payable	(2,440,614)	3,739,297
Accrued expenses	<u>(237,087)</u>	<u>813,132</u>
Total adjustments	<u>(1,578,242)</u>	<u>(2,876,539)</u>
Cash flow (used in) operations	<u>(1,565,718)</u>	<u>(2,667,146)</u>
Cash flows from investing activities:		
Acquisition of furniture and equipment	(25,360)	(50,799)
Goodwill paid in connection with acquisition	0	<u>(500,000)</u>
Cash flows (used in) investing activities	<u>(25,360)</u>	<u>(550,799)</u>
Cash flows from financing activities:		
Net increase in credit lines payable	1,110,943	1,625,384
Proceeds from subordinated loans	0	542,748
Contributions to additional paid in capital	300,000	1,239,185
Proceeds from sale of common stock	0	<u>15,000</u>
Cash flows provided by financing activities	<u>1,410,943</u>	<u>3,422,317</u>
Net change in cash	(180,135)	204,372
Cash - beginning	<u>204,372</u>	<u>0</u>
Cash - ending	<u>\$24,237</u>	<u>\$204,372</u>
Supplemental disclosures of cash paid:		
Interest	<u>\$136,879</u>	<u>\$124,787</u>

PGB INTERNATIONAL LLC  
Notes to Financial Statements

Note 1 Organization

The company was incorporated in October 2001 to acquire the net assets of G.B. International, Inc. and simultaneously acquire accounts receivable, inventory and the goodwill of the PITTRA division of Camerican International, Inc.

In connection with the acquisitions, the amounts paid in excess of the net book value have been recorded as goodwill.

Note 2 Summary of significant accounting policies

Operations

PGB International LLC (the "Company") is an importer and distributor of fruit juice concentrates. The company imports the concentrates from countries in Europe, Asia, Africa, and South America. Distribution of the concentrates is principally to companies located throughout the United States. Credit is granted to substantially all customers, the majority of whom are in the juice industry.

Use of estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Revenue Recognition

Revenue is recognized upon shipment to customers.

PGB INTERNATIONAL LLC  
Notes to Financial Statements

Note 2 Inventory

Inventory, consisting primarily of fruit juice concentrates, is stated at the lower or cost (determined on a specific identity basis) or market.

Furniture and Equipment

Furniture and equipment are stated at cost, less accumulated depreciation. Depreciation is provided over the estimated useful lives of the assets as follows:

Equipment	Declining balance	5 year estimated useful life
Furniture	Declining balance	5 -10 year estimated useful life

Note 3 Concentration of Cash Balances

The Company maintains its cash in bank deposit accounts which, at times, may exceed federally insured limits. The Company has not experienced any losses in such accounts. The Company believes it is not exposed to any significant credit risk on cash and equivalents.

Note 4 Prepaid Expense and Other Current Assets

	<u>2003</u>	<u>2002</u>
Prepaid insurance	\$21,186	\$84,673
Prepaid - miscellaneous	<u>5,450</u>	<u>29,390</u>
Total	<u>\$27,636</u>	<u>\$103,963</u>

PGB INTERNATIONAL LLC  
Notes to Financial Statements

Note 5 Furniture and equipment

	2003	2002
Equipment	\$67,409	\$42,049
Furniture	<u>8,750</u>	<u>8,750</u>
Total	76,159	50,799
Accumulated depreciation	<u>19,316</u>	<u>9,356</u>
Net furniture and equipment	<u>\$56,843</u>	<u>\$41,443</u>

Note 6 Credit line payable

On November 27, 2002, the Company entered into a credit line facility with an initial credit line in the initial amount of \$2,250,000, and subsequently increased to \$2,750,000. Borrowings on the credit line are based on 80% of the eligible accounts receivable.

The credit line bears interest at the London Interbank Offering Rate (LIBOR) plus 3.15%. The initial term of the credit facility is one year. The credit facility is secured by all assets of the Company and is personally guaranteed by the stockholders of the Company.

The above credit line facility replaced a previous facility.

Note 7 Operating leases

The Company is leasing office space in New Jersey from a stockholder at a monthly rate of approximately \$5,400. The lease is a month to month lease. Rent expense recorded in connection with the stockholder lease was \$65,200 for the year ended September 30, 2003.

The Company has other operating leases for transportation vehicles and office equipment. The lease expenses in connection with these operating leases were approximately \$52,000 for the year ended September 30, 2003. These leases expire at various times through June 2005.

PGB INTERNATIONAL LLC  
Notes to Financial Statements

Note 8 Income Taxes

The provision for income taxes differs from the amount expected using statutory rates because of permanent differences (officers's life insurance, entertainment expenses, etc.), state taxes, and other timing differences.

Note 9 Commitments

As of September 20, 2003 the Company had no open letters of credit.

Note 10 Retirement Plan

The Company maintains a 401(K) profit-sharing plan ("Plan"). Employees become eligible to participate in the Plan after completing nine months of continuous service for the Company. The Company, at its discretion, can make a contribution not exceeding 5% of the employees' salaries. For the years ended September 30, 2003 and 2002 the contribution expense was approximately \$38,500 and \$37,000, respectively.

**PGB International LLC**  
Selling, general, and administrative expenses  
For the year ended September 30, 2002

Officers salaries	\$688,000
Office salaries	577,473
Payroll taxes	89,148
Employee benefits	108,311
Rent	65,663
Utilities	9,425
Telephone	39,903
Insurance	142,490
Travel and entertainment	135,874
Dues and subscriptions	26,384
Office equipment rental	8,345
Office equipment maintenance	2,589
General office expenses	29,398
Postage	6,845
Professional fees	22,500
Courier services	33,187
Laboratory fees	29,345
Interest expense	156,982
Depreciation	3,030
Bank charges	<u>48,983</u>
Total	<u>\$2,223,875</u>



**PGB International LLC**  
Selling, general, and administrative expenses  
For the year ended September 30, 2003

<u>Officers salaries</u>	\$1,368,000
Office salaries	571,843
Payroll taxes	89,473
Employee benefits	123,874
Rent	65,039
Utilities	8,745
Telephone	33,852
Insurance	128,453
Travel and entertainment	122,398
Dues and subscriptions	17,472
Office equipment rental	8,772
Office equipment maintenance	4,871
General office expenses	27,765
Postage	7,347
Professional fees	12,500
Courier services	28,762
Laboratory fees	18,639
Interest expense	127,387
Depreciation	3,150
Bank charges	<u>34,673</u>
Total	<u>\$2,803,015</u>

**EXHIBIT B**



AMPER, POLITZINER & MATTIA P.A.  
CERTIFIED PUBLIC ACCOUNTANTS  
and CONSULTANTS

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### Independent Auditors' Report

Board of Directors  
PITTRA G. B. International, Inc.

We have audited the accompanying balance sheets of PITTRA G. B. International, Inc. as of September 30, 2005 and 2004, and the related statements of income and retained earnings, and cash flows for the years then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of PITTRA G. B. International, Inc. as of September 30, 2005 and 2004, and the results of its operations and cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

*Amper, Politziner & Mattia P.A.*

AMPER, POLITZINER & MATTIA P.A.

December 16, 2005  
Wall, New Jersey

## PITTRA G. B. INTERNATIONAL, L.V.C.

## Balance Sheet

September 30, 2005 and 2004

	<u>2005</u>	<u>2004</u>
Current assets:		
Cash	\$90,178	\$86,198
Accounts receivable		6,696,242
Direct sales	9,346,248	209,834
Indirect sales	152,190	262,896
Other accounts receivable	214,871	967,298
Inventory	728,190	<u>36,781</u>
Prepaid expenses	<u>44,189</u>	
Total current assets	10,575,866	8,259,249
Equipment	43,459	53,693
Goodwill	<u>500,000</u>	<u>500,000</u>
Total assets	<u>\$11,119,325</u>	<u>\$8,812,942</u>
Current liabilities:		
Credit line payable	\$3,748,948	\$3,747,688
Current maturity of long term debt	166,667	166,667
Accounts payable	2,780,676	1,369,643
Accrued expenses	<u>783,271</u>	<u>381,903</u>
Total current liabilities	7,479,562	5,665,901
Long term debt, less current maturities	42,621	305,342
Subordinated loans	<u>542,748</u>	<u>542,748</u>
Total liabilities	<u>8,064,931</u>	<u>6,513,991</u>
Stockholder equity		
Capital stock	15,000	15,000
Additional paid in capital	2,739,185	2,039,185
Retained earnings	<u>300,209</u>	<u>244,766</u>
Total stockholder equity	<u>3,054,394</u>	<u>2,298,951</u>
Total liabilities and equity	<u>\$11,119,325</u>	<u>\$8,812,942</u>

PITTRA G. B. INTERNATIONAL, INC.  
Statements of Income and Retained Earnings  
For the Years Ended September 30, 2005 and 2004

	<u>2005</u>	<u>2004</u>
Sales	\$53,987,193	\$49,785,362
Direct	<u>1,987,204</u>	<u>5,735,179</u>
Brokered		
Total sales	<u>55,974,397</u>	<u>55,520,541</u>
Cost of sales	50,812,746	47,416,789
Direct	<u>1,907,723</u>	<u>5,527,316</u>
Brokered		
Total cost of sales	<u>52,720,469</u>	<u>52,944,105</u>
Operating income	3,253,928	2,576,436
Selling, general, and administrative expenses	<u>3,196,383</u>	<u>2,551,897</u>
Income before provision for taxes	57,545	24,539
Provision for taxes on income	<u>2,102</u>	<u>1,690</u>
Net income	55,443	22,849
Retained earnings - beginning	<u>244,766</u>	<u>221,917</u>
Retained earnings - ending	<u>\$300,209</u>	<u>\$244,766</u>

F.L. IRA G. B. INTERNATIONAL, INC.  
Statement of Cash Flows  
For the Years Ended September 30, 2005 and 2004

	<u>2004</u>	<u>2003</u>
Cash flows from operating activities:		
Net income	<u>\$55,443</u>	<u>\$22,849</u>
Adjustments to reconcile net income to net cash from operating activities		
Depreciation and amortization	10,234	50,434
Decrease (increase) in:		
Accounts receivable	(2,544,337)	(1,386,830)
Inventory	239,108	(475,535)
Prepaid expenses and other current assets	(7,408)	(9,145)
Increase (decrease) in:		
Accounts payable	1,411,033	70,960
Accrued expenses	<u>401,368</u>	<u>(194,142)</u>
Total adjustments	<u>(490,002)</u>	<u>(1,944,258)</u>
Cash flow (used in) operations	<u>(434,559)</u>	<u>(1,921,409)</u>
Cash flows from financing activities:		
Net increase in credit lines payable	1,260	1,011,361
Proceeds of long-term borrowings	0	500,000
Repayment of long-term borrowings	(262,721)	(27,991)
Contributions to additional paid in capital	<u>700,000</u>	<u>500,000</u>
Cash flows provided by financing activities	<u>438,539</u>	<u>1,983,370</u>
Net change in cash	3,980	61,961
Cash - beginning	<u>86,198</u>	<u>24,237</u>
Cash - ending	<u>\$90,178</u>	<u>\$86,198</u>
Supplemental disclosures of cash paid:		
Interest	<u>\$243,776</u>	<u>\$158,259</u>

PITTRA G. B. INTERNATIONAL, INC.  
Notes to Financial Statements

Note 1. Organization

The company was incorporated in October 2001 to acquire the net assets of G.B. International, Inc. and simultaneously acquire accounts receivable, inventory and the goodwill of the PITTRA division of Camerican International, Inc.

In connection with the acquisitions, the amounts paid in excess of the net book value have been recorded as goodwill.

Note 2 Summary of significant accounting policies

Operations

PITTRA G.B. International, Inc. (the "Company") is an importer and distributor of fruit juice concentrates. The company imports the concentrates from countries in Europe, Asia, Africa, and South America. Distribution of the concentrates is principally to companies located throughout the United States. Credit is granted to substantially all customers, the majority of whom are in the juice industry.

Use of estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Revenue Recognition

Revenue is recognized upon shipment to customers.

PITTRA G. B. INTERNATIONAL, INC.  
Notes to Financial Statements

Note 2 Inventory

Inventory, consisting primarily of fruit juice concentrates, is stated at the lower or cost (determined on a specific identity basis) or market.

Furniture and Equipment

Furniture and equipment are stated at cost, less accumulated depreciation. Depreciation is provided over the estimated useful lives of the assets as follows:

Equipment	Declining balance	5 year estimated useful life
Furniture	Declining balance	5 -10 year estimated useful life

Note 3 Concentration of Cash Balances

The Company maintains its cash in bank deposit accounts which, at times, may exceed federally insured limits. The Company has not experienced any losses in such accounts. The Company believes it is not exposed to any significant credit risk on cash and equivalents.

Note 4 Prepaid Expense and Other Current Assets

	<u>2005</u>	<u>2004</u>
Prepaid insurance	\$36,901	\$32,031
Prepaid - miscellaneous	<u>7,288</u>	<u>4,750</u>
Total	<u>\$44,189</u>	<u>\$36,781</u>



PITTRA G. B. INTERNATIONAL, INC.  
Notes to Financial Statements.

Note 5 Furniture and equipment

	<u>2005</u>	<u>2004</u>
Equipment	\$67,409	\$67,409
Furniture	<u>8,750</u>	<u>8,750</u>
Total	76,159	76,159
Accumulated depreciation	<u>32,700</u>	<u>22,466</u>
Net furniture and equipment	<u>\$43,459</u>	<u>\$53,693</u>

Note 6 Credit line payable

The Company maintains a credit line facility with a credit line of \$3,750,000. Borrowings on the credit line are based on 80% of the eligible accounts receivable.

The credit line bears interest at the London Interbank Offering Rate (LIBOR) plus 3.15%. The term of the credit facility is one year. The credit facility is secured by all assets of the Company and is personally guaranteed by the stockholders of the Company.

Note 7 Long term debt

In June 2004 the Company entered into a term loan for \$500,000 payable over a period of three years. Payments are made in equal monthly installments of principle plus interest at the London Interbank Offering Rate (LIBOR) plus 3.15%. The term loan is from the same financial institution as the credit line referred to in Note 6 and is secured with the same collateral as the credit facility.

PITTRA G. B. INTERNATIONAL, INC.  
Notes to Financial Statements

Note 8 Operating leases

The Company leases office space at a monthly rate of approximately \$3,770 plus certain expenses. The lease is for a term of five years and expires on December 31, 2008.

Note 9 Income Taxes

The provision for income taxes differs from the amount expected using statutory rates because of permanent differences (officers's life insurance, entertainment expenses, etc.), state taxes, and other timing differences.

Note 10 Commitments

As of September 20, 2005 the Company had no open letters of credit.

Note 11 Retirement Plan

The Company maintains a 401(K) profit-sharing plan ("Plan"). Employees become eligible to participate in the Plan after completing nine months of continuous service for the Company. The Company, at its discretion, can make a contribution not exceeding 5% of the employees' salaries. For the years ended September 30, 2005 and 2004 the contribution expense was approximately \$40,100 and \$37,600, respectively.